

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL D. SUMMERS,

Plaintiff,

v.

CLARK COUNTY JAIL, et al.,

Defendants.

CASE NO. C13-5484 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 65), and Plaintiff Michael Summers’s (“Summers”) objections to the R&R (Dkt. 66).

**I. PROCEDURAL BACKGROUND**

On June 24, 2013, Summers filed a 42 U.S.C. § 1983 action against Defendants Clark County Jail, Jackie Batties (“Batties”), Garry Lucas (“Lucas”), and ConMed Medical Services (“ConMed”) (collectively “Defendants”). Dkt. 6. Summers alleges that ConMed violated his Eighth Amendment rights by failing to provide adequate medical treatment for an injury Summers allegedly sustained by falling from his bunk.

1 *Id.* at 6. Summers also alleges that Clark County Jail, Batties, and Lucas violated his  
2 Fourth and Eighth Amendment rights by not providing a ladder to his bunk. *Id.*

3 On May 22, 2014, ConMed moved for summary judgment. Dkt. 52. On May 23,  
4 2014, Clark County Jail, Batties, and Lucas also moved for summary judgment. Dkt. 55.

5 On September 3, 2014, Judge Creatura issued the R&R recommending that the  
6 Court grant Defendants' motions for summary judgment because Summers failed to  
7 exhaust his administrative remedies. Dkt. 65 at 2.

8 On September 15, 2014, Summers filed objections to Judge Creatura's R&R. Dkt.  
9 66. On September 22, 2014, Clark County Jail, Batties, and Lucas responded. Dkt. 67.

## 10 **II. DISCUSSION**

11 Summers objects to Judge Creatura's recommended disposition. Dkt. 66.  
12 Summers argues that he was unable to exhaust his administrative remedies because he  
13 was transported to a different jail in Oregon. *Id.* at 1.

14 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge's  
15 recommended disposition. Rule 72(b) provides as follows:

16 The district judge must determine de novo any part of the magistrate  
17 judge's disposition that has been properly objected to. The district judge  
18 may accept, reject, or modify the recommended disposition; receive further  
19 evidence; or return the matter to the magistrate judge with instructions.  
20 Fed. R. Civ. P. 72(b)(3).

21 The Court agrees with Judge Creatura that Summers failed to exhaust his  
22 administrative remedies. Following the alleged incident, Summers submitted one  
medical grievance regarding the medical care he received for back pain. Dkt. 56,

1 Declaration of Michael Anderson (“Anderson Dec.”), Ex. 2. Summers, however, did not  
2 file a second medical grievance after the Jail responded to his first grievance. Anderson  
3 Dec. ¶ 6. Although Summers claims that he filed a second medical grievance, Summers  
4 does not provide evidence to support this assertion. *See* Dkt. 63. Moreover, Summers  
5 did not file a nonmedical grievance regarding the lack of a ladder on his bunk. Anderson  
6 Dec. ¶ 8.

7 Summers nevertheless argues that he was unable to exhaust his administrative  
8 remedies because he was transported to a different jail in Oregon. Dkt. 66 at 1. Although  
9 Summers was transferred to an Oregon jail, the allotted time for filing a second medical  
10 grievance or a nonmedical grievance had already expired before he was transferred. *See*  
11 Anderson Dec. ¶ 6–7. Summers does not contest that the prescribed administrative  
12 remedies were available to him before he was transferred. *See* Dkt. 66.

13 Finally, Defendants demonstrated that the procedures for filing grievances were  
14 provided to each inmate in Clark County Jail. *See* Anderson Dec. ¶ 4, Ex. 1. Indeed, the  
15 fact that Summers filed an initial grievance regarding his medical treatment indicates his  
16 knowledge of the prescribed administrative remedies for his complaints. *See* Anderson  
17 Dec., Ex. 2.

18 In sum, Summers failed to exhaust his administrative remedies. Accordingly, the  
19 Court adopts Judge Creatura’s R&R.

### 20 **III. ORDER**

21 The Court having considered the R&R, Summers’s objections, and the remaining  
22 record, does hereby find and order as follows:

1 (1) The R&R is **ADOPTED**;

2 (2) Defendants' motions for summary judgment (Dkts. 52, 55) are  
3 **GRANTED**; and

4 (3) The claims against Defendants are **DISMISSED with prejudice**.

5 Dated this 21st day of October, 2014.

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BENJAMIN H. SETTLE  
United States District Judge